

REMARKS/ARGUMENTS

Applicant timely traversed the restriction (election) requirement issued on June 22, 2005, in a reply filed as Amendment A on July 8, 2005. Thus, all originally pending claims 1-40 have been examined in this application.

As requested by the Examiner, Applicant has updated that status of the prior application referred to in the first paragraph of the disclosure. The drawings are objected to because they do not show the handle comprised of rubber or an elastomeric material. There are no sectional views of the handle in any of the figures. The surface of rubber or any elastomeric material is shown in patent drawings without any markings or special representation. Sponge rubber in section is shown as alternating light and dark parallel stripes. However, the handle is shown in all of the figures in either a perspective or elevation view. It is respectfully requested that the objection to the drawings be withdrawn. Finally, the disclosure has been amended to include a brief description of FIGS. 11a and 11b on page 5.

Claims 1-40 stand provisionally rejected under 35 U.S.C. §101 as claiming the same invention as that of claims 1-26 of copending application 10/701,219. The apparatus covered by pending claims 1-40 in the present application is a pipe repair clamp installation tool which is the reverse of that recited in claims 1-26 of the aforementioned copending application. The invention claimed in the present application is illustrated in FIGS. 10-16 of this application. The apparatus claimed in the aforementioned copending application is illustrated in FIGS. 10, 11 and 12 in the co-pending application, which figures are attached hereto as Exhibit A. In pending claim 1, the

arm 110 is recited as coupled to the body portion 102 of the apparatus adjacent a first end thereof. This connection is accomplished by means of a first pivot/coupling pin 106 shown in the figures. Claim 1 further recites that a second opposed end of the arm 110 is adapted for insertion in an aperture 134 in a first edge flange 130b of the repair clamp 130. In the claims of the copending application, the arm 164 is recited as coupled to the body portion 152, not at the end of the body portion, but intermediate the first and second opposed ends thereof. In addition, the clasp 112 in pending claim 1 is recited as coupled to the body portion 102 at a location intermediate the first and second opposed ends of the body portion. Pending claim 1 also recites that an end of the clasp is adapted to engage an outer edge of one of the repair clamp's flanges. In the copending application, the clasp 168 which engages an edge of a repair clamp flange is recited as pivotally coupled to the body portion 152, not intermediate the first and second opposed ends thereof, but rather adjacent the first end thereof as shown in FIGS. 10-12 in the copending application. Thus, while the arm and clasp recited in the two sets of claims describe the arm as adapted for insertion in an aperture in a repair clamp first edge flange and the clasp as adapted for engaging an outer edge of the repair clamp's other edge flange, the positioning on and attachment of the arm and clasp to the body portion of the repair clamp installation apparatus is reversed in these two sets of claims. These two applications were filed to secure claim coverage for the embodiment of the invention shown in FIGS. 10-16 of the subject application and the alternative embodiment shown in FIGS. 10-12 of the copending application cited by the Examiner in the double patenting rejection. Another way to look at these differences between these two embodiments is that the arm 112 in the present application includes a flange edge engaging end 112a, and the arm 164 in the

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compending application includes an end 164 adapted for insertion in an aperture in a repair clamp flange, with both arms attached to the body portion of the apparatus at a location between its two opposed ends. In addition, the clasp 110 in the present invention includes a clamp end 110a adapted for insertion in an aperture in a repair clamp flange, while the clasp 168 in the compending application includes an edge engaging clasp 168b that includes a recessed slot 168b adapted for engaging an edge of a repair clamp flange. Thus, the attachment mechanisms for engaging the repair clamp's flanges and the mounting locations of the first and second pivot arms in the two embodiments disclosed and claimed in the pending application and the referenced compending application are reversed in these two embodiments.

Claims 1-40 stand rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 1,885,128 to Montgomery. Montgomery is directed to a load binder "for use in binding pipes, poles, lumber and other heavy articles on trucks, wagons and other vehicles, and for use in lifting extremely heavy loads." See page 1, lines 2-5. The load binder includes first and second hooks 18 and 33 disposed on opposed ends thereof and adapted to engage a chain such as of the link type. The primary object of the Montgomery load binder is to allow for adjustment of the binder after the combination of the binder and a flexible member, such as the link chain shown in the figures, is positioned about the articles or objects being bound and prior to the tightening operation. This ability to adjust the binder about the load prior to tightening allegedly allows for compensation for excess strain when the binder is being adjusted as well for accurate adjustment of the binder to prevent relative movement of the articles or objects being bound. See page 1, lines 6-18.

There are various fundamental differences between the Montgomery load binder and

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claimed invention. First, the Montgomery load binder is not disclosed for use in installing a repair clamp on a pipe, nor is it capable of performing this function. The load binder is incapable of being removed after tightening of the chain about the bound articles with the articles remaining bound by either the chain or another non-disclosed arrangement or device. The purpose and function of Montgomery's load binder is fundamentally different from that of the claimed invention as these two devices are neither designed, nor intended, to be interchangeable. Independent claims 1 and 21 have thus been amended to recite that the arm and clasp maybe disengaged and removed from the edge flanges of the repair clamp and the apparatus removed from the repair clamp following tightening of the nut and bolt combinations. This feature of the claimed invention is neither disclosed or even suggested in Montgomery, where removal of the load binder will result in release of the articles or objects previously bound.

As disclosed on page 1, lines 84-98, of Montgomery, the adjustable feature of the load binder is incorporated in the yoke 21 in the form of a pair of spaced openings or slots 22. Extending into each of these openings 22 from one of their walls are plural spaced teeth 23. The openings 22 serve as a passage for a pair of headed studs 24 which extend outwardly from opposite sides of the shank 12 and which are adapted to engage the teeth 23. Yoke 21 is adjustably and pivotably connected to the curve shank 12 of the lever 10. Yoke 21 maybe removed from the curved shank 12 and replaced by springing the sides of the yoke outwardly from one another so as to clear the studs 24 in lateral portions of the curved shank 12. Thus, the adjustable mechanism for adjusting the load binder prior to tightening is disposed in the load binder's yoke 21 in the form of a pair of elongated slots 22 in combination with plural spaced teeth

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23 extending into the slots. However, in the claimed invention the “adjustable means” is disposed in the central body portion 102 of the repair clamp installation tool in the form of a pair of elongated apertures 120, each having plural spaced concave recesses 120a for receiving a respective attaching lug 116 as shown in FIG. 10. The claimed “adjustable means” is thus incorporated in a different component and operates in a different manner from that in the adjustable yoke installation of Montgomery.

The Examiner relies upon the ‘128 patent to Montgomery as an anticipatory reference with respect to the claimed invention. Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of the claimed invention. *RCA Corp. v. Applied Digital Data Systems, Inc. et al.*, 221 USPQ 385, 388 (Fed. Cir. 1984). However, the relevant statutory standard for determining anticipation as set forth under §102 is a high standard, for the prior art reference must teach the very invention of the patent and disclose each and every material element of the claim in question. Unless all of the same elements are found in exactly the same situation and united in the same way to perform an identical function in a single prior art reference, there is no anticipation. *General Battery Corp. v. Gould Inc.*, 215 USPQ 1007, 1014-1017 (D. Del. 1982). In the present case, the ‘128 patent does not disclose the an adjustable arrangement for apparatus used in installing a repair clamp on a pipe, where the adjustable arrangement is disposed on the main portion, or the body, of the apparatus, as in the claimed invention. In Montgomery, the adjustable arrangement is disposed on an end link, or yoke, connected to the load binder’s center body portion. It is respectfully submitted that the elongated, linear slot 22 could not be incorporated in Montgomery’s shank 12 and provide

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adjustability for the load binder because of the curved shape of the shank at the inner end of the load binder's lever 10. In Applicant's invention, the elongated slot which affords adjustability of the pipe repair clamp installation tool could only be incorporated in the tool's body or handle portion because of the thin shape of the tool's second pivot arm, or clasp, 112. Moreover, there is nothing in Montgomery that suggests that the load binder disclosed therein could be used to maintain a clamp-like member in position on a pipe prior to tightening of the clamp-like member on the pipe and then be removed after the clamp-like member is tightened leaving only the clamp-like member on the pipe, as now claimed. It is respectfully submitted that the load binder of Montgomery could not be used to maintain the chain in position on the restrained articles and could then be removed following tightening of the chain allowing the chain to remain on the restrained articles in tight engagement with the articles as now recited in the pending claims for the pipe repair clamp installation apparatus. Montgomery does not disclose an arrangement for maintaining the chain on the restrained articles following removal of the load binder.

Applicant's adjustable pipe repair clamp installation tool is designed for use in confined areas as frequently a leaking pipe is buried in the ground or otherwise not readily accessible. For this reason, Applicant's invention employs only three pivotally coupled members, i.e., a body portion, an arm and a clasp. The claimed adjustable means is disposed in the device's body portion. The Montgomery load binder, on the other hand, includes additional components not found in Applicant's invention. These additional components include a pair of eye bolts 16 and 28, a pair of links 19 and 31, and a pair of end hooks 18 and 35. These additional components increase the length of Montgomery's load binder and render it impractical for use in confined

spaces. In addition, the shape of the curved link 15 in the load binder renders it impractical for use with a pipe repair clamp. As shown in FIGS. 1, 2 and 3 in Montgomery, movement of the handle 11 of the load binder from the loose position shown in FIG. 2 to the tightened position of FIG. 3 causes the curved link 15 to be displaced inwardly toward the confined load. Movement of one of the pivoting members in Applicant's invention inwardly toward the pipe repair clamp would be prevented by contact with the pipe repair clamp. Thus, inward displacement of one of the pivoting members during tightening of the pipe repair clamp would be prevented by contact with the pipe repair clamp in Applicant's invention, while inward movement of one of the pivoting members in the Montgomery load binder is possible because it is used with a flexible chain for restraining an initially loose load of pipes or poles. In addition, the Montgomery load binder could not be removed from a pipe repair clamp after tightening because loosening of the load binder would require inward displacement of the binder's curved link 15 which would engage the pipe repair clamp and prevent loosening of the load binder.

There is one additional fundamental difference between the Montgomery load binder and Applicant's pipe repair clamp installation apparatus. The adjustable mechanism in the Montgomery load binder is not intended, nor does it function, to accommodate pipes or poles of various diameters. Rather, the adjustable mechanism in the Montgomery load binder is used simply in the tightening of the load binder by adjusting the tightness of the binder about a load as the binder is moved to the secure, fully tightened position. Adjustment of the load binder and chain combination to accommodate pipes of different diameter may be accomplished by attaching the hooks of the load binder to the appropriate links in the binding chain. Applicant's invention,

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on the other hand, is designed to operate with a wide range of pipe clamp sizes and pipe diameters. This feature of Applicant's invention is emphasized throughout the specification.

The Examiner argues that the recited repair clamp is not part of the claimed invention. However, pending independent claims 1 and 21 recite that the arm of the apparatus includes an end adapted for insertion in an aperture in an edge flange of a repair clamp and the clasp of the apparatus includes an end adapted to engage an outer edge of an edge flange of a repair clamp. Neither of these limitations is disclosed in Montgomery's load binder. Moreover, the adjustable means is described as allowing for changing the spacing between the arm and clasp of the apparatus to accommodate a range of repair clamp sizes and pipe diameters. This limitation is also not disclosed in Montgomery. Thus, Applicant's invention is clearly claimed in terms of use with a repair clamp for a pipe, and is limited to structure useful in this environment. The relevant prior art does not include all restraining or clamping devices, but only those suitable for use with a repair clamp disposed on a pipe. In a case involving a driver adapted to set a joint with a particular threaded lobed collar, the Federal Circuit reversed a Board of Appeals rejection of the claims stating that "The framework - the teachings of the prior art - against which patentability is measured is not all drivers broadly, but drivers suitable for use in combination with this collar, for the claims themselves are so limited." *In re Stencel*, 4USPQ2d 1071, 1072 (Fed. Cir. 1987).

With this amendment, all of the pending claims are believed to define patentable subject matter. Therefore, reconsideration and allowance of the pending claims is respectfully solicited.

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Respectfully submitted,

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